

(916) 324-5711

OCTOBER 2 1990

*Stm 4663*In Reply Refer
To:331:WT:S-4663R. C. Roberts
801 A Street
San Rafael, CA 94901

Dear Mr. Roberts:

STATEMENT OF WATER DIVERSION AND USE No. 4663 (BUCKHORN RESERVOIR) - BUCKHORN CANYON IN LASSEN COUNTY

This is an acknowledgement of your August 28, 1990 letter in which you disagree with the contents of our July 17, 1990 letter to the U. S. Bureau of Land Management (BLM). It is our understanding from telephone conversations with you on August 22, August 27, and September 10, 1990 that you do not agree with: 1) the chronology indicating possible nonuse of the 2,000 acre-feet of water held in Buckhorn Reservoir, and our resulting statement that the pre-1914 appropriative right may have been lost; 2) our previous action in designating Statement of Water Diversion and Use No. 4663 (Statement 4663) as an inactive file; and 3) our statement that you had advised staff that you no longer had any concerns with the upstream facilities of BLM.

We reviewed the files for Statement No. 4663, Complaint 18-14, and Applications 28051, 28493, 28494, 28780, and 28781. Based upon the material contained in those files, the chronology of events reflected in our July 17, 1990 letter to BLM was correct. Your primary concern is that this office is making a determination as to whether or not the old storage right for Buckhorn Reservoir was lost because of nonuse. We did not make such a determination. Please note that in the last paragraph of our July 17 letter, as well as in several telephone discussions with you, we have stressed the fact that the State Water Resources Control Board has "no jurisdiction" to make a binding determination on this type of water right. That authority lies with the California judicial system. In addition, please recall that our July 17, 1990 letter was merely a response to BLM's request for information from our files for the status and history of water rights in the Buckhorn Canyon drainage. Since most of our microfiche records are of such poor quality that readable copies could not be reproduced, we prepared the chronology listing instead.

SURNAME
DWR 540 REV. 1/86*Try 10/1/90**Dupuis 10-1-90*

OCTOBER 2 1990

Our previous action to identify Statement 4663 as inactive was likely based upon the lack of supplemental reports in the file subsequent to 1975. Enclosed is a copy of the 1981 to 1983 supplemental report showing no use of water and consequently staff's note, in the lower right hand corner, listing the file as inactive. Since we can not make readable copies of the file, please feel free to visit our office and review the file personally.

Our statement that you had indicated no further concerns with BLM's upstream dams was based on information in a contact report dated August 21, 1979 of a conversation between Mr. Wynn Rowlands of our Complaint Section and you. A copy of the contact report is enclosed.

You submitted a new Statement of Water Diversion and Use form claiming a 1904 right for Buckhorn Reservoir. Based on this filing, we will reactivate the Statement 4663 file. Even though you indicated your actual use of water occurs during the months of May through September, the water being utilized during that period appears to be water that you had collected to storage during the wet season of the year. The right claimed under Statement 4663, which originally was filed by Lucille French in 1969, is for storage of 2,000 acre-feet per annum. This is not to say that your property may not also possess a riparian entitlement to the natural flows of Buckhorn Canyon. We ask that when you receive supplemental Statement forms, you give them your immediate attention and return them to this office so that our files will represent your current use of water.

As indicated in our July 17, 1990 letter, the only rights upstream of your facility are permitted Applications 28051, 28493, 28494, 28780, and 28781 for stockwatering reservoirs having a capacity no greater than 1 acre-foot. All such permits are issued subject to prior vested rights.

In your telephone inquiry with Whalen Toy of my staff on September 19, 1990, you indicated that Round Corral Reservoir was located within the NE 1/4 of SW 1/4 Section 16, T 34 N, R 16 E, MDB&M. Following review of our records, we advised you that there were no filings with our Board in Section 16, either a water right appropriation or Statement of Water Diversion and Use. You also inquired about Buckhorn Lake and Pilgrim Reservoir. We advised you that we have no record of rights on Buckhorn Lake although the U. S. Geological Survey maps indicate that it existed prior to 1954. It appears that Pilgrim Reservoir is located in the State of Nevada, therefore, our Board does not have any water rights jurisdiction at that facility.

If you have any questions, please contact me at (916) 324-5711.

Statement 4663

-3-

OCTOBER 2 1990

Sincerely,

ORIGINAL SIGNED BY:

Roger Dupuis, Chief
Application Unit #1

Enclosures

cc: U.S. Bureau of Land Management
c/o Rick Hanks
2545 Riverside Drive
Susanville, CA 96130

bcc NFB

S4663/WT0Y/wt/10-1-90

CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject S-4663 - RC ROBERTS

Division Personnel W Toy

Date 9/19/90 Time 1345

APPLICATIONS UNIT

Personal ☐ Where _____

Telephone ☒ Number 415 456 8600

Individual(s)/Agency Contacted RC ROBERTS

Conversation Description SPOKE WITH MR ROBERTS WHO WAS INQUIRING
ON BLM FACILITIES WHICH HE CLAIMS TO AFFECT HIS
RIGHTS. THE SITES ARE ① ROUND CARROL WITHIN NE SW, 16, T34N
N, R16E, WDB&M; ② BUCKHORN LAKE WITHIN SW NW, 11, T34N
R16E & ③ PELGRAM LAKE WITHIN NW NW 29, T35N, R18E
WDB&M. I ADVISED HIM THAT

- ① - NO FILINGS ON OUR MAP FOR WATER RIGHTS
- ② - NO FILING ON THIS RESERVOIR, BUT POSSIBLE OLD
RIGHT, 15 MINUTE QUAD WAS DATED 1954
- ③ - FACILITY IS IN KNUADA, WE HAVE NO JURISDICTION

Decision(s) _____

Action Items _____

SURNAME				
---------	--	--	--	--



**r. c. roberts
and affiliated companies**

801 A Street, San Rafael, CA 94901 Phone (415) 456-8600

~~DD~~/WT

August 28, 1990

Division of Water Rights
P.O. Box 2000
Sacramento, CA 95810

Re: 331:WT:S4663

Gentlemen:

I am in receipt of your letter dated July 17, 1990. I adamantly disagree with your statement of facts on a number of items.

Upon purchase of this property, I personally visited your office to discuss the water rights issue and was informed that this was a pre-1914 dam and there were no problems with water rights. What prompted my visit prior to purchase was when Mr. Kroesen had informed me that a problem existed with the structure of the dam - the fact that the head gate was not operable and had been removed and replaced on the outlet side of the dam and they had used the water to irrigate the Horne Meadow but were in violation of dam safety requirements.

I proceeded to employ a civil engineer to submit plans and specifications for repair, took out construction permits, and completed construction and final inspections with a cost in excess of \$75,000. I have continuously (every year) been subject to inspection by dam safety and taken all corrective measures required by said inspections. There has been no interruption of use from this facility. In some years the spillway did spill water; in the majority of those years, it did not.

Under my ownership no one could ascertain if they viewed the premises; that this was an inactive facility. At no time did I ever inform any member of the State of California that we were not actively using the storage facility.

437

Division of Water Rights
August 28, 1990
Page 2

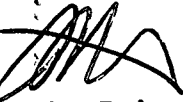
On numerous occasions I met with Mr. Mark Morris of the Eagle Lake Resource Office of the Bureau of Land Management and discussed alternatives for the improper impoundment of my water in the Buckhorn Drainage. Mr. Morris and I concluded, in agreement, to jointly pursue the construction of a dam on the Painter Creek Drainage. We worked with a staff engineer of the BLM, Mr. James Buffum, filed on water rights for drainage, secured said rights, and prepared engineering plans (at my cost) for construction of Bo Roberts Dam. As of late the BLM has not and does not wish to honor the commitments agreed to by Mr. Mark Morris and confirmed by Mr. Rex Cleary.

In regard to the matter of applications and permits jointly held by BLM and permittees: they were never represented by BLM that they were anything more than stock ponds and by separate agreement I, and others, are obligated for their maintenance. This filing never intended or envisioned transferring my water rights, established in 1904, on the Round Corral Dam - which has a capacity of approximately 350 acre feet. The Round Corral Dam was constructed by the BLM without any structural permits, dam safety, nor does it contain an outlet.

I believe that with the present posture of BLM and their absence to honor their agreements made by Mr. Mark Morris and confirmed by Mr. Rex Cleary. I have no alternative than to demand that all drainage water within the Buckhorn Drainage be undiverted or not impounded. In absence of that, we shall seek legal remedy, including damages, from the BLM and the State of California.

I would appreciate an immediate response and am directing a copy of this letter to Mr. Rick Hanks of the Susanville District BLM office.

Sincerely,



R.C. Roberts

RCR/da

cc: Mr. Rick Hanks - Susanville District
Bureau of Land Management

p.s. My correct address is 801 A Street in San Rafael, CA 94901

We have numerous dams, water diversions, and water rights in Lassen and Glen counties. If anything is in jeopardy, please so inform us.

STATE WATER RESOURCES
CONTROL BOARD

1990 AUG 31 AM 1:43

DIV. OF WATER RIGHTS
SACRAMENTO

STATE WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS
 STATEMENT OF WATER DIVERSION AND USE

(This is not a Water Right)

This statement should be typewritten or legibly written in ink.

STATE WATER RESOURCES
CONTROL BOARD

1990 AUG 31 AM 1:43

DIV. OF WATER RIGHTS
SACRAMENTO

A. Name of person diverting water RC ROBERTS
 Address 801 A ST SAN RAFAEL 94901 Telephone: 415 456-8600

B. Name of body of water at point of diversion Buckhorn Drainage
 Tributary to _____

C. Place of diversion 1/4 1/4 Section _____, Township _____, Range _____, _____ B&M,
LOSSEN County, or locate it on sketch of section grid on reverse side with regard to section
 lines or prominent local landmarks.

D. Name of works Buckhorn Res 331:WT:54663

E. Capacity of diversion works 2000 +- Acre Feet 2 cubic feet per second
 Capacity of storage reservoir _____ gallons per minute
 _____ gallons
 _____ acre-feet

State quantity of water used each month in gallons or acre-feet

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
						200	500	500	500	200			1900 +-

If monthly and annual use are not known, check months in which water was used. State extent of use in
 units, such as acres of each crop irrigated, average number of persons served, number of stock watered, etc.

300 Acre Meadow Pasture Irrigated Every Year

Maximum annual water use in recent years 1900 Acre Feet gallons

Minimum annual water use in recent years 1000 Acre Feet acre-feet

Type of diversion facility: gravity X, pump _____

Method of measurement: weir _____, flume _____, electric power meter _____, water meter _____, estimate X

F. Purpose of use (what water is being used for) Irrigation

G. General description or location of place of use (use sketch of section grid on reverse side if you desire)
Rosedale Flat East Side Horn Ranch

H. Year of first use as nearly as known 1904

I. Name of person filing statement RC ROBERTS

Position Owner of Ranch Organization _____

Address 801 A ST SAN RAFAEL Telephone: 415 456-8600

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

DATED: Aug 28, 19 90, at San Rafael, California.

Signature: _____

See Instructions on Reverse Side

Revised 4663

The location of the diversion point and the place of use may be sketched on this section grid. If it is used, please enter the section(s), township and range below and show any streams or other landmarks that will assist in identifying the area.

Section(s) _____
Township _____; Range _____; _____ B&M

INSTRUCTIONS:

A separate statement should be filed for each point of diversion.

A duplicate copy will be returned for your file.

Please send the completed statement to: STATE WATER RESOURCES CONTROL BOARD
Division of Water Rights
P. O. Box 2000
Sacramento, CA 95812-2000

CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Subject RC ROBERTS - S 4663

Division Personnel W TOY

Date 9/10/90 Time 1225

APPLICATION UNIT

Personal ☐ Where _____

Telephone ☒ Number 415 456 8600

Individual(s)/Agency Contacted RC ROBERT

Conversation Description SPOKE WITH MR ROBERTS TO ACKNOWLEDGE RECEIPT OF HIS AUGUST 28, 1990 LETTER AND WILL BE WORKING UP A REPLY. INFORMED THAT MY INTENT IS TO ADVISE HIM THAT THE LETTER REFLECTS MATERIAL IN OUR FILE AND WILL COMMENT THAT THE STATE HAS NO JURISDICTION TO DECLARE THAT A PRE-1914 RIGHT IS LOST.

I INQUIRED AS TO HIS STATEMENT FORM BEING SUBMITTED. I SUGGEST THAT IT WILL BE USE AS A MEANS TO REACTIVATE S-4663. MR ROBERT ASKED IF HE IS REQUIRED BY LAW TO FILE A STATEMENT FOR HIS OLD APPROPRIATING RIGHT. I ADVISED HIM YES BUT ALSO INFORMED HIM THAT THERE IS NO PENALTY. I DID INFORM HIM OF THE ADVANTAGES TO FILE A CLAIM. ALSO STRESS THAT THE STATE HAS NO JURISDICTION TO DETERMINE THAT THE RIGHT IS LOST OR VALID, THE COURT SYSTEM HAS AUTHORITY.

MR ROBERT ASK THAT HE IS CONSIDERING TO PHYSICALLY REMOVE BLU'S DAM. I SUGGEST FILING COMPLAINTS AGAINST THE FACILITIES INSTEAD.

Decision(s) _____

Action Items SENT HIM COMPLAINT, STATEMENT
& STOCKPOND FORM

SURNAME				
---------	--	--	--	--

CONTACT REPORT**DIVISION OF WATER RIGHTS**

STATE WATER RESOURCES CONTROL BOARD

Division Personnel

W TOY

APPLICATION UNIT

Subject

STATEMENT 4663 - ROBERT

Date

8/27/90

Time

1035

Personal ☐

Where

Telephone ☒

Number

415 456 8600

Individual(s)/Agency Contacted

R C ROBERTS

Conversation Description

SPOKE WITH MR. ROBERTS ABOUT HIS CONCERNS AND ADVISED HIM ^{SINCE THIS} SITUATION HAS A TENDENCY TO GO TO LITIGATION, I WAS ADVISED BY MY SUPERVISOR TO HAVE HIM FORMALLY OBJECT TO JULY LETTER AND WE WILL RESPOND TO ALL ISSUES. I STATED THAT I HAVE REVIEWED THE FILES AND THE INFORMATION AS GIVEN IN THE FILES REFLECT ^{THAT} GIVEN IN THE JULY LETTER TO BLM. IT INDICATED MY WILLINGNESS TO GO THROUGH THE FILES WITH HIM, THAT TO REACTIVATE THE STATEMENT ALL WE REQUEST IS INFORMATION OF CONTINUED USE TO STORE 2000 ACRES-FEET. I ALSO INDICATED MY CONTACT WITH DAM SAFETY IN WHICH THEY INFORMED ME THAT A ~~BREAK~~ IN CERTIFICATION OCCURRED FROM 1971 TO 1980, ^{WHETHER} IT MAY OR MAY NOT CONSTITUTE A LOSS OF RIGHT, SINCE IT WAS A LEGAL POINT I CAN'T SAY. MR. ROBERT RESPONDED THAT HIS PREDECESSORS CONTINUE TO STORE WATER EVEN WHEN DAM SAFETY PLACED A RESTRICTION, THAT WE ARE TOTALLY IN ERROR AND WE SHOWN FAVORISM TO BLM RESULTING IN INJURY TO HIM. MR. ROBERT INFORMED ME THAT HE WILL GO TO COURT ON THIS MATTER, NAMING BLM & US.

Decision(s)

Action Items

ADVISE SUPERVISOR: 1) NO ON HIS FORMAL OBJECTION 2) POSSIBLE SUIT WHICH NAMES BLM AND US

SURNAME

S-4663

CONTACT REPORT

DIVISION OF WATER RIGHTS

STATE WATER RESOURCES CONTROL BOARD

Subject S-4663 - ROBERTS

Division Personnel W TOY

Date 8/22/90 Time 0950

APPLICATION UNIT

Personal ☐ Where _____

Telephone ☒ Number 415 456 8600

Individual(s)/Agency Contacted R. C. ROBERTS - 801 A STREET
SAN RAFAEL, CA 94901

Conversation Description SPOKE WITH MR ROBERTS WHO TOTALLY DISAGREES
WITH OUR JULY 17, 1990 LETTER TO US BLM. APPARENTLY
BLM HAS TAKEN THE POSITION THAT HIS PRE 1914 RIGHT FOR
BUCK HORN CANYON DAM WAS LOST BY NOT USE. HE DISAGREES
THAT:

1) CONTINUOUS NON USE HAS OCCURRED IS UNTRUE. MR ROBERT
STATED HE SPENT \$100000. TO REPAIR, HAD IT CLEAR WITH
DIVISION OF SAFETY OF DAMS AND HAS BEEN USING THE WATER.

I EXPLAIN THAT REVIEW OF S-4663, THE LAST REPORT OF USE
OF WATER WAS PRIOR TO 1981 AND NO FURTHER REPORTS OF
USE. BASED UPON NOT RECEIVING THE SUPPLEMENTAL
REPORT, THE STAFF MADE THE FILE INACTIVE. INDICATE
THAT THE FILE CAN BE REACTIVATED WITH NEW INFORMATION
OF USE BY HIM

2) OUR STATEMENT OF NO CONCERNS WITH BLM'S UPSTREAM
FACILITIES IS UNTRUE. MR ROBERT CLAIM HE MADE NO SUCH
STATEMENT. I INFORMED MR ROBERT THAT MY REMARK

8/22/90
Decision(s) REVIEWED CHRONOLOGY AND
APPEARS CORRECT AS STATED IN JULY LETTER

Action Items CONTACT DIV OF SAFETY DAM, I
SPOKE WITH SUPERVISOR WHO INDICATED DUE
TO WORKLOAD RESTRICTION CAN NOT PERMIT TIME

TO REVIEW AND RESEARCH ROBERTS PROBLEM, ASK FOR
FORMAL INQUIRY FOR ACTION

SURNAME		
	8/22/90 (ALL SD (BIO) LEFT MESSAGE TO CONTACTING.	
	8/24/90 (ALL SD AND LEFT MESSAGE	

11

CONTACT REPORT

DIVISION OF WATER RIGHTS
STATE WATER RESOURCES CONTROL BOARD

Division Personnel

WT

Subject

S-4663 - ROBERTS

Date

8/22/90

Time

Personal ☐

Where

Telephone ☐

Number

Individual(s)/Agency Contacted

CONTINUE

Conversation Description

WAS SOLELY BASED ON THE CORRESPONDENCES IN THE FILES. IT APPEARS FROM MR ROBERTS COMMENT HE IS HAVE PROBLEMS WITH BLM.

MR ROBERT FINDS THE JULY LETTER TOTALLY NONFACTUAL AND CONSIDERING LEGAL ACTION AGAINST BLM AND THE BOARD TO PROTECT HIS RIGHT. I ADVISED HIM THAT THE JULY LETTER JUST GAVE THE CHRONOLOGY OF EVENT AS GIVEN IN THE FILES AND ASKED/READ TO HIM THE LAST PARAGRAPH OF THE LETTER, THAT BEING 1) THE FILE CAN BE REACTIVATED WITH NEW DATA AND 2) THE BOARD HAS NO JURISDICTION TO DETERMINE THE LOSS OF THE RIGHT, INFORMED HIM THAT THE RECORD CAN BE REVIEW BY HIM OR HIS LEGAL REPRESENTATIVE. IF HAS A COMPLAINT AGAINST ME, THEN HE SHOULD FILE A COMPLAINT WITH COMMISSIONER.

MR ROBERT REQUEST THAT WE REVIEW THE MATERIAL, CORRECT OUR ERRORS, WRITE HIM WITH A COPY TO BLM AND MAKE THE FILES AVAILABLE TO HIS REVIEW. ALSO CONTACT SAFETY OF DAMS

Decision(s)

Action Items

SURNAME

2/

CONTACT REPORT**DIVISION OF WATER RIGHTS**

STATE WATER RESOURCES CONTROL BOARD

Subject 54663 - RC ROBERTDivision Personnel W TOYDate 8/22/90 Time 1125Application ChartPersonal ☐ Where _____Telephone ☒ Number 323 1421Individual(s)/Agency Contacted MR BENNETT, DIV SAFETY OF DAMS,
NORTH REGION

Conversation Description IN RESPONSE MR ROBERTS SUGGESTION, I
CONTACTED STAFF WITH SAFETY OF DAMS. MR BENNETT
SCANNED THE BUCKHORN DAM FILE (No 238) AND INDICATED
THAT THE FACILITY WAS CERTIFIED UP TO 10/20/71 AND IT THEN
WAS FOUND TO HAVE PROBLEMS. IT WAS RE-CERTIFIED BY
SAFETY OF DAM ON 10/20/80. THERE WAS A RESTRICTION
PLACED BY THE STATE FROM 1971 TO 1980 THAT ANY WATER
HELD BEHIND THE DAM WILL NOT BE HIGHER THAN THE
INLET OF THE OUTLET PIPE, THEREFORE 2000 AF WAS
NOT ALLOWED UNTIL THE FACILITY PROBLEM ARE CORRECT
MR BENNETT INDICATED THE FACILITY DID COLLECT OVER THE
RESTRICTED LEVEL. THERE WAS A PHOTOGRAPH TAKEN IN EARLY
1980.

Decision(s) _____

Action Items _____

SURNAME				
---------	--	--	--	--

54663

(916) 324-5739

JULY 17 1990

In Reply Refer
to: 331:WT:54663U.S. Bureau of Land Management
c/o David Lehmann
2545 Riverside Drive
Susanville, CA 96130

Gentlemen:

WATER RIGHTS INQUIRY AND STATEMENT OF WATER DIVERSION AND USE NO. 4663 -
BUCKHORN CANYON IN LASSEN COUNTY

In response to your June 14, 1990 inquiry, following is a chronology of events from the file for Statement of Water Diversion and Use No. 4663:

- Lucille French's Statement of Water Diversion and Use (SWDU) was received on January 2, 1969 and eventually was assigned No. 4663. She was filing a claim of right for Buckhorn Reservoir having a capacity estimated at 2,000 acre-feet and located within the NE1/4 of SE1/4 of Section 31, T35N, R17E, MDB&M. The first use of water was given as 1904. The purpose of use was for irrigation and stockwatering.
- On September 15, 1970, the Division of Water Rights (Division) was advised by staff from the Department of Water Resources, Division of Safety of Dams (DSD) that Buckhorn Dam was owned by Joseph B. Kroesen.
- Lucille French submitted supplemental reports of use for SWDU No. 4663 covering the period from 1970 to 1975. The source of water was designated as Secret Creek (springs) instead of Buckhorn Dam, but specific locations of the springs were not given. Use of water was listed as irrigation of 650 acres and water for 900 head of livestock.
- On January 27, 1975, the Division replied to a U.S. Bureau of Land Management (BLM) inquiry as to water use in the Buckhorn Canyon drainage. The Division advised BLM that SWDU No. 4663 was on file, apparently claiming a pre-1914 appropriative right for storage.
- On November 12, 1976, Joseph B. Kroesen wrote BLM complaining that the construction of its dam in Rodeo Flat would impact his water right (see summary below on the Kroesen complaint).

SURNAME
DWR 540 REV. 1/86

Ley 7/5/90

Dupuis 7-17-90

JULY 17 1990

- Division staff spoke with BLM on November 15, 1976 and again advised the agency of SWDU No. 4663. We indicated that it was our understanding from DSD that Joseph B. Kroesen was the new owner of Buckhorn Reservoir, however Lucille French still retained title to the surrounding lands. DSD indicated that 1) the facility was within its jurisdiction and was considered unsafe; 2) the facility was presently out of service and all surface water was being passed downstream through an outlet pipe; and 3) Kroesen had submitted plans to DSD for repair of the facility.
- On November 19, 1976, the Division made an inquiry as to BLM's basis of right for its dam being built upstream of Buckhorn Dam (see summary below on the Kroesen complaint).
- On March 10, 1977, Lucille French submitted two new SWDU claims for diversions in the Secret Creek drainage. The sources for one SWDU were within Sections 1, 10, 11, 12, 15, 16, 23, 26 and 35, T32N, R15E, and Sections 2, 3 and 4, T31N, R15E, MDB&M. The second SWDU named the source as Pearson Springs located within Sections 2 and 3, T31N, R15E, MDB&M.
- On April 19, 1977, the Division acknowledged the change of ownership of Buckhorn Reservoir to Joseph B. Kroesen and that it was understood that plans were pending before DSD to bring the facility up to DSD standards. The Division also requested that new supplemental reports of use for SWDU No. 4663 be submitted since Lucille French's 1970 to 1975 reports were for diversions from Secret Creek springs, not for Buckhorn Dam. Kroesen was advised that a SWDU was required for each diversion being used under riparian or pre-1914 appropriative claim.
- On May 3, 1977, Joseph B. Kroesen filed, on behalf of Lucille French, amended supplemental reports of use for SWDU No. 4663 for the period of 1969 through 1974. The source of water was listed as Pilgrim Creek Lake rather than Buckhorn Dam. The diversion was describe as being within the NE1/4 of SE1/4 of Section 2, T34N, R16E, MDB&M. Use of water was indicated as irrigation of 300 acres.
- On June 3, 1977, the Division acknowledged receipt of Lucille French's 1977 SWDU forms, however, the Division advised that a SWDU for each diversion was necessary. Mrs. French eventually submitted forms for numerous diversions throughout her property, which were filed as SWDU Nos. 10822-10833 and 10871-10878. None of these new SWDU's are for sites upstream of Buckhorn Reservoir.
- The Division sent a follow-up letter to BLM on June 3, 1977 requesting that the agency reply to Kroesen's May 26, 1977 complaint against a BLM facility (see summary below on the Kroesen complaint).
- The Division received a Notice of Assignment of SWDU No. 4663 to R. C. Roberts as of August 8, 1978.

JULY 17

- The last correspondence in the SWDU No. 4663 file is an uncompleted supplemental report of use for the period of 1981 to 1983. There is notation made by Division staff that as of January 23, 1984, SWDU 4663 was to be listed as inactive use.
- In early June 1990, R. C. Roberts made a telephone inquiry as to the status of SWDU No. 4663. Division staff informed Mr. Roberts that the file was shown as inactive. He was advised that if there was a continuous break in use of more than five years, the old storage right for Buckhorn Reservoir may have been legally lost.

Following is a chronology of events from Kroesen's complaint on a dam upstream of Buckhorn Reservoir (file 18-14):

- On November 16, 1976, Joseph B. Kroesen filed a complaint with the Division against the Fish and Game Board for a dam at Rodeo Flat, upstream of Buckhorn Dam. The agency Kroesen was apparently referring to was BLM.
- On June 9, 1977, BLM informed the Division that the District Manager and its solicitor were working on the Kroesen complaint.
- Division staff conducted an on-site investigation of the area on June 26, 1977. Staff found that two ponds were built upstream by BLM. Both reservoirs were dry and each had no outlet device to bypass water. It was noted that beside the pond in Rodeo Flat, the Pilgrim reservoir site was located in Nevada, thus not being within the State of California's jurisdiction.
- A telephone conversation between Division staff and the BLM solicitor on August 3, 1977 indicated that to resolve the situation BLM will release water after July 1 by using siphon devices at both facilities.
- The complaint file was closed on August 21, 1979. The file contains information that R. C. Roberts, successor in interest to Kroesen, indicated to Division staff that his facility (Buckhorn Reservoir) was repaired and had satisfied or cleared DSD requirements. The file also indicates that R. C. Roberts had no further concerns with BLM upstream dams.

Our records show that the only other water rights upstream of Buckhorn Reservoir are permitted Applications 28051, 28493, 28494, 28780, and 28781. These permits are jointly held by BLM, R. C. Roberts, Espil Sheep Ranch, Freese Ranch, and Dodge Ranch. None of the five storage applications received protests, therefore, no issues of injury to downstream vested rights or environmental impacts were raised. Notwithstanding, these permits are subject to all prior vested rights.

JULY 17 1990

Presently, the Division has no information that water is being collected and used for SWDU No. 4663 to be reactivated. Please note that even though the Division has identified the file as inactive, it can be re-activated if information warrants. The State Board has no authority to declare any right claimed under a SWDU either legally valid or lost due to non-use, since such jurisdiction lies totally with the courts. Should the old right for Buckhorn Reservoir be legally determined to have been lost by five consecutive years of non-use, then an application to appropriate water should be filed with our Board.

If you have any questions, please contact me at (916) 324-5739.

Sincerely,

ORIGINAL SIGNED BY

Whalen Toy
Sanitary Engineering Associate
Application Unit #1

cc: R. C. Roberts
Box 178
Novato, CA 94947

!WTOY:ym:LS4663:7/5/90



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

EAGLE LAKE RESOURCE AREA

2545 Riverside Drive
Susanville, California 96130

225/WT
IN REPLY REFER TO:

2800 (CA-026)
CA-21730

JUN 14 1990

Division of Water Rights
Attn: Mr. Wayean Toy
P.O. Box 2000
Sacramento, CA 95812-2000

Dear Mr. Toy:

Please send us all the information you have on the status and history of water rights on the Buckhorn Canyon drainage in T.36N., R.17E., Mount Diablo Meridian, Lassen County. This is in regards to Statement number 4663 as Don Wannebo of this office discussed with you on June 13, 1990.

Thank you for your assistance.

Sincerely,

David Lehmann
Acting Area Manager

237

S1663

WFO 40-118-671

FORM 10-60 (Rev. 1-5-59)